

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14143, of Lee Ngon Win Chin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 4101.3) to use the ground floor of the subject premises as a restaurant seating less than twenty-five persons in an HR/SP-2 District at premises 501 H Street, N.W., (Square 485, Lot 29).

HEARING DATE: June 20, 1984  
DECISION DATE: July 11, 1984

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of H and 5th Streets, N.W. It is in an HR/SP-2 District at premises known as 501 H Street, N.W.

2. The site is rectangular in shape. It measures twenty feet in width and eighty feet in depth. The site is improved with a three story brick structure and a rear brick garage. The site is within the Chinatown neighborhood area.

3. The upper two stories of the structure are used as residential units. The first floor is used as a carry-out delicatessen and also has seating for eighteen patrons.

4. The facade of the first floor is a glass store front bay window with entrance to the store. There is a large sign above the glass front advertising the carryout-delicatessen. There are menus posted on the glass front.

5. The site abuts a sixteen foot wide public alley to the north, followed by the Good News Gospel Mission in the HR/SP-2 District. To the east is 5th Street, followed by a row dwelling operated by the Gospel Mission. To the south is H Street, followed by a PMI parking lot in the HR/SP-2 District. To the west is 505 H Street, the first floor of which is occupied by the Chinatown Deli having nine seats, 507 H Street, occupied by a law office, 509 H Street, the first floor of which is occupied by a grocery store called the Veterans Food Market, and 521 H Street, the first floor of which is occupied by a grocery store. The majority of the second and third floors of the buildings in the block appear to be residentially occupied. To the northwest along the 6th Street frontage in the subject square are law offices, various association offices, the Fulton Hotel at 512

I Street, apartment buildings and row dwellings, all in the HR/SP-2 District.

6. The subject ground floor has had a series of certificates of occupancy. Certificate of Occupancy No. B126556 was issued on July 22, 1981, as authorized by a use variance granted by the BZA in Order No. 13427, dated March 31, 1982, to use the ground floor as a carryout-delicatessen. Certificate of Occupancy No. B132842 was issued on December 29, 1982, for use as a carryout-delicatessen, not sexually oriented. Certificate of Occupancy No. B136478 was issued on October 6, 1983, for a restaurant seating twenty-eight persons.

7. On June 21, 1983, the subject applicant filed Application No. 14029 with the BZA to use the ground floor as a restaurant seating less than twenty-five persons. The application was withdrawn on September 21, 1983.

8. By letter dated April 4, 1984, the Deputy Zoning Administrator advised that Certificate of Occupancy No. B136478 was issued in error, as there had not been any BZA Order authorizing such use. The error was apparently discovered during a chance inspection of the premises by an official of the Zoning Administrator's office.

9. The applicant filed the subject application on April 10, 1983, to continue the restaurant use which he believed was granted to him under Certificate of Occupancy No. B136478. The applicant had modified the store to provide tables for eighteen persons and purchased tables and chairs and other equipment so that his patrons could sit while partaking of the delicatessen fare.

10. The existing carryout-delicatessen and the proposed restaurant use are not permitted uses in the HR/SP-2 District. Both uses are first permitted as a matter-of-right in the C-1 District. The applicant now seeks a variance from the use provisions.

11. A major determinant in requesting permission to continue to operate a restaurant at this location was the ability to provide seating for many elderly customers. The store presently attracts a large percentage of its patronage from the elderly residents of the Wah Luck Senior Citizens apartment and the Judiciary House apartment. The deli-carryout provides a convenient eating and meeting place for these patrons. The business has been selected by the Washingtonian Magazine as a winner of a "Washington Cheap Eats Award." The reasonably priced fare offered by the deli-carryout has increased the patronage and the need for seating, particularly for the elderly.

12. H Street at this location has two-way traffic and two hour metered parking on both sides of the street. There is a large PMI parking lot located immediately south of the site. There is controlled curb parking permitted on 6th and 5th Streets in the block. The large majority of the patrons of the proposed restaurant are anticipated to be pedestrians walking from either residence or work place.

13. The applicant submitted a petition with 700 signatures in support of the application. A review of the signatures reflects people working in the neighborhood and residents.

14. The Office of Planning, by report dated June 13, 1984, recommended approval of the application. The Office of Planning was of the opinion that there are exceptional circumstances which relate to the subject site's existing physical layout, history of use, special needs of its users and location that support this application. The first floor architecture of the subject premises reflects its history of store front usage. This factor is noted in BZA Case No. 13427, pursuant to which the existing deli-carryout operates. The Office of Planning was of the opinion that the introduction of a maximum of twenty-four seats to the existing deli will not intensify the use to a point where it will create an adverse impact on the neighborhood. The Office of Planning noted the existence of several other retail businesses in the same block. The Office of Planning further reported that a significant influence in its recommendation was the relationship of the site to the Comprehensive Plan. The proposed use is consistent with plan objectives for the extension of retail uses along H Street in this block, in Chinatown. A change of zoning application to implement the Plan is expected in the future. The Board concurs with the findings and recommendation of the Office of Planning.

15. There was no opposition to the application at the public hearing or filed in the record.

16. Advisory Neighborhood Commission 2C filed no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for purposes for which it is zoned. The Board further must find that the relief requested can be granted without substantial detriment to the public good and without

substantially impairing the intent, purpose and integrity of the zone plan.

The Board concludes that the physical layout of the subject first floor and the history of the use of said first floor as a store constitutes such a hardship. The Board in addition found that the immediate area contains mixed uses including other restaurants, food stores and offices. The Board further notes that the site, which had been abandoned before, has been renovated since the issuance of BZA Order No. 13427, dated March 31, 1981. Furthermore, the application has been supported by 700 patrons of the store.

The Board further concludes that the relief can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accordingly, it is hereby ORDERED that this application is GRANTED, SUBJECT to the CONDITION that the seating capacity of the facility shall be less than twenty-five persons.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Walter B. Lewis and Carrie L. Thornhill to grant; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Steven E. Sher (Bjorn)  
STEVEN E. SHER  
Executive Director

27 AUG 1984

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14143order/LJP10